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10 Attorney for Plaintiff
11 DONNA MATHEWS

12 UNITED STATES DISTRICT COURT
13
14 NORTHERN DISTRICT OF CALIFORNIA

15 DONNA MATHEWS,
16
17 Plaintiff,

18 vs.

19 PAN AMERICAN LIFE INSURANCE
20 COMPANY; and DOE 1 through Doe 20,
21 Inclusive,

22 Defendants.
23 _____/

No. C 07-02757 SBA

DECLARATION OF BURT
BERNSTEIN IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

Date: June 10, 2008
Time: 1:00 p.m.
Cttrm: 3

24 I, Burt Bernstein, declare:

25 1. I have been retained as an expert witness in this case by counsel for
26 Plaintiff. I have been associated with several insurers over the past 35 years. My last position was
27 with the Chubb Sovereign Life Insurance Company from which I retired in 1995 as Vice President
28 of the claims department. I began my career with them in 1965 as a senior life and disability
underwriter. Over the years I held several positions, among them Secretary of the Corporation and
Vice President of the underwriting department. As a licensed California attorney, I was
responsible for all contested claim litigation, and managed this area in each of the approximately
45 states in which we operated. A copy of my curriculum vitae is attached hereto.

1 2. For the past thirteen years on a full time basis, and on a part time basis
2 for the preceding five years, I have worked as a consultant and expert witness for and against
3 insurance companies. I have been designated as an expert in several hundred cases, have testified
4 in deposition between 75 and 100 times, and have testified in trial approximately 15 times in both
5 State and Federal Courts.

6 3. In forming my expert opinions in this matter, I carefully reviewed the
7 following documents: the Complaint, the Answer; the insurance policies; the file produced by Pan
8 American Life Insurance Company; a case chronology; the deposition of Michael Jones (both
9 volumes); the deposition of Cory Simon (both volumes); the deposition of Donna Mathews; Pan
10 American's Motion for Summary Judgment; the Declaration of Michael Jones in Support of the
11 Motion for Summary Judgment.

12 4. Based on my review of the above documents, my 35 plus years as an
13 active participant in just about every area of insurance company operations, but especially claims
14 and underwriting, it is my expert opinion that the manner in which this case was handled by Pan
15 American Life Insurance Company was not within the custom and standards of the insurance
16 industry.

17 5. The investigation of this claim did not come close to the standards
18 demanded, not only by statute but by the standards of disability carriers themselves. In this case,
19 the Company made no real effort to substantiate the facts of Ms. Mathews' disability. Instead the
20 appeared to put obstacles in her path. Communication was late and often confusing. They failed
21 repeatedly to advise her of outstanding requirements needed to finalize their claim process.

22 6. With the initial claim documents her physician indicated her disability
23 would last at least until March 2006. Without any investigation or even a basic inquiry, Pan
24 American terminated disability benefits simply on what was essentially an estimate (guesstimate) on
25 the part of her physician. It took several months for Ms. Mathews to have her benefits restored.

26 7. In general the internal procedures at the Company are nothing short of a
27 disaster. Calculations were done improperly, monies were withdrawn from her checking account
28 without justification and in improper amount, payments were delayed, checks were sent to her

1 without explanation and for amounts that were incorrect. Months after disability began, a third
2 policy was discovered for which no payments had been made.

3 8. The policies provide a rehabilitation benefit. One policy provides an
4 amount up to 24 times the basic benefit and the other pays without a cap restriction. When Ms.
5 Mathews directed an inquiry as to what was needed to qualify for this benefit, she got back a very
6 brief statement. She proceeded to write that she wanted to start a nursing program and provided
7 the names of the institutions where the course was available. She received back from Pan American
8 a terse statement that the benefit was denied. No information was provided as to what additional
9 information was needed; no attempt was made by the Company to provide any explanation or
10 guidance, just a simple rejection.

11 9. In my expert opinion, Pan American handled this claim in a fashion that is
12 completely incompatible with the custom and practice of the insurance industry. The Company
13 seems to lack the basic procedures needed to be established to consider the needs of their insureds
14 on a basis equal to that of the Company. Not only are their accounting procedures suspect, but the
15 lack of knowledge on the part of their claims adjuster is appalling. Pan American appears to be an
16 organization that is completely out of touch with the way in which claims are to be handled, as
17 mandated by statute and case law. Their behavior is egregious and indicative of bad faith in almost
18 every area of their operations, but especially in their inability to handle claims properly and in a
19 timely fashion.

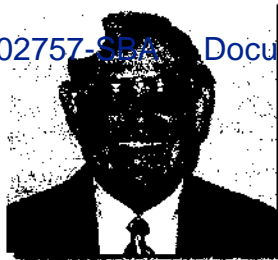
20 10. If called as a witness, I could and would testify competently to the
21 foregoing.

22 I declare under penalty of perjury under the laws of the State of California and the
23 United States that the foregoing is true and correct.

24 Dated this 15th day of May at Goleta, California.

25 
26 Bert Bernstein
27
28

EXHIBIT A

**Burt Bernstein***Insurance Litigation Consultant*

Goleta, California

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BURT BERNSTEIN, J. D.**EXPERT WITNESS, LIFE, DISABILITY, HEALTH****RETIRED INSURANCE COMPANY EXECUTIVE**

Expert witness and consulting services for disputes involving life, disability, and health insurance. As the retired vice president of underwriting and claims for a major carrier, I am well prepared to analyze the complicated disputes that often arise in these areas. The problems encountered often require the services of an unbiased expert with extensive experience in areas of home office and field protocols. I am prepared to opine on the duties of insurance companies (especially the duty of good faith and fair dealing), and their agents. I have done this successfully for the past 15 years, representing more than one hundred law firms, for both the insured and insurers.

CURRICULUM VITAE

Profile	More than 15 years of experience as an expert in hundreds of state and federal bad faith cases based on more than 40 years experience as an insurance company executive responsible for insurance claims, underwriting, Sales and compliance. Proven as a persuasive communicator with strong Analytical skills. Invited speaker at 50-plus underwriting and claims conferences nationwide.
Business Experience	
1990 - Present	BURT BERNSTEIN INSURANCE LITIGATION CONSULTANTS Consultant and expert witness in bad faith cases in both state and federal courts. Selected as an arbitrator in disputes involving reinsurers and direct writers.
	ADJUNCT PROFESSOR OF INSURANCE LAW Santa Barbara College of Law
1965 - 1995	CHUBB SOVEREIGN LIFE INSURANCE COMPANY Vice President of Claims Department and Corporate Secretary. Vice President of Underwriting, Compliance and Licensing Departments. Senior Life and Disability Underwriter
Prior to 1965	MUTUAL LIFE INSURANCE COMPANY OF NEW YORK Home Office Underwriter
	NEW YORK LIFE INSURANCE COMPANY Sales Management Trainee and Insurance Sales
Education	J. D. - Santa Barbara College of Law B. A. - City University of New York
Affiliations	International Claims Association Western Claims Association Home Office Life Underwriters Association Western Life Underwriters Association American, California and Santa Barbara Bar Association
Community Involvement	Recipient of California Bar Association Award for Pro Bono services Legal Aid Society